

E-mails from Counties re: Condo experiences

2/22/2007

In support of SB 527

From Flathead County – (Gary Hall, Commissioner)

I discussed this with my fellow Commissioners this morning and actually do have a couple of "horror stories to tell; First one: This happened to me personally. I was going to lunch with my best friend of 20 years and we passed a surveyor with a reputation of circumventing the planning process at every opportunity, in fact has a reputation as a crook and shyster in the community of planning. My friend greeted him and when we got in his truck to go to lunch I asked him where he knew him from. He said he occasionally used him for surveying a lot location for one of his custom homes that he builds in the Valley. He then went on to tell me that a client wanted to build a 6 plex condo on Flathead Lake and when my friend approached this surveyor he was told, **"Build them as apartments because we don't have to go through review process and then turn around and immediately sell them as Condo's"**. My friend said no way and went directly to the Planning and Zoning office to get help with his Condo project and is preparing to build the Condo's.

The other story was similar and was told to me by my fellow Commissioner. In the community of Lakeside there was a man that was planning to build 100 apartments, without subdivision review, and when he applied to the Lakeside Water and Sewer Board, he was asked more about the project and told the board that **he was told that the way to build condo's is to build them as apartments and then change them over to condo's as soon as the project was completed.** Again, no storm water plan, no subdivision review whatsoever.

The last horror story is an actual event that happened this year. A developer built "apartments" along the lake shore between Somers and Lakeside and because no review took place punched a hole in a neighbors septic system and polluted the lake, has inadequate parking, no provision for storm water runoff, (currently flooding the neighbors,) and ultimately ended up with the neighbors petitioning for interim (emergency) zoning for that area. Again, after the fact and after the damage had been done.

I am in full support of SB527 and am hopeful for a positive outcome.

Respectfully yours,

Gary D. Hall/ Flathead County Commissioner

Thanks Gary

These are excellent examples of why the condo statutes should be tightened up and the Planning and Zoning Office share the same experiences.

Here's another more recent approach to develop condos without any public review. At least one surveyor decided to place language on all his Certificates of Survey's that state "This COS Contemplates Condos". When we contacted the surveyor to request that he stop, it got really tense. That there is no local review for a COS is bad enough, but now having a recorded COS plats indicating condos are OK magnifies the potential for major county exposure and legal fees.

Unknown public service delivery costs directly caused by the condo development are truly a latent time bomb. When these public service delivery costs surface and do become known, at some future date, they will have grown significantly and payment most likely fall to our children; who won't have any choice in choosing whether to pay!

Just one more evasive means to circumvent statutory condominium review by local agencies in Flathead County!

Jeff

From Lake County –

In Lake County we have had two existing RV parks that have condo'd with no review using the exemption. Without any zoning in place, some of these condo sites in the old RV parks are now being developed with stick built structures and turning into permanent year round use as opposed to the seasonal transient use typically associated with RV parks. These sites are not well suited for more than RV's in that there is limited parking area on the sites, there are no setback requirements to maintain a fire break between the structures and there is no provision for stormwater management or maximum impervious surface area. There has also been septic system violations in one of the park where the new development has changed the flow rates. In this instance the county and state has had a difficult time working with the condo association (as opposed to an individual) to deal with the problem.

A more recent development in the City of Polson was a condominium that was going through review and received a recommendation of denial from the Planning Board because of its location in a proposed Airport Influence Zone (the creation of the Airport Influence Zoning has not yet been completed by the County airport board but there is a draft regulation that is going through the public review process). After the denial the developers have withdrawn the application and submitted it as an exempted condominium development. In this case there were two properties in the subject proposal. One was created by deed exhibit prior to implementation of the Montana Subdivision and Platting Act and the applicants successfully argued that the lot was created in compliance with the chapter. The other was a lot that existed prior to the implementation of the Montana Subdivision and Platting Act that was "retraced" by survey in 1980 and recorded. Because a "retracement" survey is exempted from review under the Montana Subdivision and Platting Act, the survey was filed in compliance with the chapter. Neither one of these parcels had ever been reviewed by the governing body when created, and a condominium development was never contemplated on either tract when it was created. Because the area was zoned, the proposed condominium development was allowed to proceed without input from the County Airport Board regarding their concerns regarding compliance with the proposed Airport Zoning.

Lastly, the majority of Lake County is currently zoned for density only. This zoning regulation does not address lot development other than the permitted number of units per acre. Since the court ruling on Shultz v. Liberty Cove, 2006 MT 247, any condominium development proposal in Lake County would be exempted from review if it met the density requirement and it is determined that "the land was divided in compliance with the chapter" which would only require a "retracement" survey to be filed. This would allow condominium development in the majority of Lake County without review and approval of the governing body on issues such as public access, parking, adequate fire department access and input on construction concerns, stormwater management, etc.

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From Missoula County (Michael Sehested)

Missoula County has a 70 unit condo project on a site that was previous denied subdivision approval based largely on dangerous access and a 395 unit condo project on about 400 acres (zoned 1 dwelling unit per acre) with the units on what to the uninitiated look a lot like lots. The problem is since no one has the right to review, or at least there is no trigger for review. of condo declarations there could be dozens of them out there, that I don't know about. In both of the cases set out above the zoning is complied with and the developers have available solutions to health issues. Because Missoula County has County wide building permits we will catch them at the zoning compliance stage when they try to build but if the condo complies with zoning & health regulations the permit issues. Of course if we catch it at this stage and it doesn't comply then we may be dealing with an innocent purchaser who inherits the problems. There is no analysis of impact on services, wildlife, agriculture or anything else and of course no possibility of seeking mitigation for those impacts.

There is also no park dedication